

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

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| Freddy Lewis Barnette, |) | Civil Action No.: 9:09-cv-00949-RBH |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| Warden Padula, S.C.D.C.; Associate |) | |
| Warden Brooks; and Lee C.I. Medical Staff, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Plaintiff, Freddy Lewis Barnette, proceeding pro se, filed this action on April 10, 2009. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant, for pretrial handling. On May 5, 2009, the Magistrate Judge filed a Report and Recommendation which recommends to this court that the plaintiff's case against the Lee C.I. Medical Staff be dismissed without prejudice and without issuance and service of process on the basis that this defendant is not a "person" under 42 U.S.C. § 1983. Service of process has already been authorized as to the other defendants.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th

Cir. 1983).

On May 4, 2009, the plaintiff filed a document entitled “Objection/Amendment” (Docket Entry #15). In this document, the plaintiff states that he objects to the Magistrate’s recommendation to dismiss the defendant Lee C.I. Medical Staff, but he appears to acknowledge that such would not be a proper defendant under 42 U.S.C. § 1983. He requests permission from the Court to amend his Complaint to name a doctor and nurse as defendants. Plaintiff also requests that “defendant (S.C.D.C.) be changed to S.C.D.C. Classification Branch: Supervisor of Inmate Records-Mr. James Breenon; Also the man in charge of the calculation of time: Mr. Ernest Rowe” be added as parties.

The Clerk of Court is directed to dismiss the defendant “Lee C.I. Medical Staff” without prejudice and without issuance and service of process as recommended by the Magistrate Judge and to file the plaintiff’s document again as a Motion to Amend the Complaint so that the Magistrate Judge may address the matter further.

After carefully reviewing the Report, objections, pleadings, and applicable law, the court adopts the Report and Recommendation of the Magistrate Judge, incorporates it herein, and overrules any objections except as provided above. For the reasons stated therein and in this Order, this case is hereby **DISMISSED** as to defendant Lee C. I. Medical Staff, without prejudice and without issuance and service of process. The Clerk is directed to docket the plaintiff’s document again as a Motion to Amend Complaint, and the case is recommitted to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

s/ R. Bryan Harwell

R. Bryan Harwell

United States District Judge

Florence, South Carolina
May 14, 2009